

## SENATE BILL No. 238

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-33-8-3.3; IC 35-38-2-1; IC 36-2-16.5-6.

**Synopsis:** County supplemental adult probation fund. Provides that money in the county supplemental adult probation services fund or the local supplemental adult probation services fund may be used only to provide probation services and to pay part or all of the salaries of probation officers. (Under current law, money in the fund may be appropriated only for supplementing those services and supplementing those salaries.) Specifies that the county fiscal body determines the amount of any appropriations made from the county supplemental adult probation services fund, and the city or town fiscal body determines the amount of any appropriations made from the local supplemental adult probation services fund. Repeals a provision specifying that administrative fees deposited into a county or local supplemental probation services fund may be used only to pay for salary increases required under the probation officers salary schedule that became effective January 1, 2004.

**Effective:** July 1, 2015.

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**Smith J**

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January 6, 2015, read first time and referred to Committee on Corrections & Criminal Law.

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First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 238

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-33-8-3.3, AS AMENDED BY P.L.217-2014,  
2 SECTION 189, IS AMENDED TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2015]: Sec. 3.3. (a) This section does not apply  
4 to a defendant charged in a city or town court.  
5 (b) If a defendant who has a prior unrelated conviction for any  
6 offense is charged with a new offense and placed under the supervision  
7 of a probation officer or pretrial services agency, the court may order  
8 the defendant to pay the pretrial services fee prescribed under  
9 subsection (e) if:  
10 (1) the defendant has the financial ability to pay the fee; and  
11 (2) the court finds by clear and convincing evidence that  
12 supervision by a probation officer or pretrial services agency is  
13 necessary to ensure the:  
14 (A) defendant's appearance in court; or  
15 (B) physical safety of the community or of another person.  
16 (c) If a clerk of a court collects a pretrial services fee, the clerk may



1 retain not more than three percent (3%) of the fee to defray the  
 2 administrative costs of collecting the fee. The clerk shall deposit  
 3 amounts retained under this subsection in the clerk's record  
 4 perpetuation fund established under IC 33-37-5-2.

5 (d) If a clerk of a court collects a pretrial services fee from a  
 6 defendant, upon request of the county auditor, the clerk shall transfer  
 7 not more than three percent (3%) of the fee to the county auditor for  
 8 deposit in the county general fund.

9 (e) The court may order a defendant who is supervised by a  
 10 probation officer or pretrial services agency and charged with an  
 11 offense to pay:

12 (1) an initial pretrial services fee of at least twenty-five dollars  
 13 (\$25) and not more than one hundred dollars (\$100);

14 (2) a monthly pretrial services fee of at least fifteen dollars (\$15)  
 15 and not more than thirty dollars (\$30) for each month the  
 16 defendant remains on bail and under the supervision of a  
 17 probation officer or pretrial services agency; and

18 (3) an administrative fee of one hundred dollars (\$100);

19 to the probation department, pretrial services agency, or clerk of the  
 20 court if the defendant meets the conditions set forth in subsection (b).

21 (f) The probation department, pretrial services agency, or clerk of  
 22 the court shall collect the administrative fee under subsection (e)(3)  
 23 before collecting any other fee under subsection (e). Except for the  
 24 money described in subsections (c) and (d), all money collected by the  
 25 probation department, pretrial services agency, or clerk of the court  
 26 under this section shall be transferred to the county treasurer, who shall  
 27 deposit fifty percent (50%) of the money into the county supplemental  
 28 adult probation services fund and fifty percent (50%) of the money into  
 29 the county supplemental public defender services fund (IC 33-40-3-1).  
 30 The fiscal body of the county shall appropriate money from the county  
 31 supplemental adult probation services fund:

32 (1) to the county, superior, or circuit court of the county that  
 33 provides probation services or pretrial services to adults to  
 34 ~~supplement~~ **provide** adult probation services or pretrial services;  
 35 and

36 (2) to ~~supplement~~ **pay all or part of** the salary of:

37 (A) an employee of a pretrial services agency; or

38 (B) a probation officer in accordance with the schedule  
 39 adopted by the county fiscal body under IC 36-2-16.5.

40 (g) The county supplemental adult probation services fund may be  
 41 used only to ~~supplement~~ **provide** adult probation services or pretrial  
 42 services and to ~~supplement~~ **pay all or part of the** salaries for probation



1 officers or employees of a pretrial services agency. ~~A supplemental~~  
 2 ~~probation services fund may not be used to replace other probation~~  
 3 ~~services or pretrial services funding.~~ **The county fiscal body shall**  
 4 **determine the amount of any appropriations made from the county**  
 5 **supplemental adult probation services fund under this section.** Any  
 6 money remaining in the fund at the end of a fiscal year does not revert  
 7 to any other fund but continues in the county supplemental adult  
 8 probation services fund.

9 (h) A defendant who is charged with more than one (1) offense and  
 10 who is supervised by the probation department or pretrial services  
 11 agency as a condition of bail may not be required to pay more than:

- 12 (1) one (1) initial pretrial services fee; and
- 13 (2) one (1) monthly pretrial services fee per month.

14 (i) A probation department or pretrial services agency may petition  
 15 a court to:

- 16 (1) impose a pretrial services fee on a defendant; or
- 17 (2) increase a defendant's pretrial services fee;

18 if the financial ability of the defendant to pay a pretrial services fee  
 19 changes while the defendant is on bail and supervised by a probation  
 20 officer or pretrial services agency.

21 (j) An order to pay a pretrial services fee under this section:

- 22 (1) is a judgment lien that, upon the defendant's conviction:
- 23 (A) attaches to the property of the defendant;
- 24 (B) may be perfected;
- 25 (C) may be enforced to satisfy any payment that is delinquent
- 26 under this section; and
- 27 (D) expires;

28 in the same manner as a judgment lien created in a civil  
 29 proceeding;

30 (2) is not discharged by the disposition of charges against the  
 31 defendant or by the completion of a sentence, if any, imposed on  
 32 the defendant;

33 (3) is not discharged by the liquidation of a defendant's estate by  
 34 a receiver under IC 32-30-5; and

35 (4) is immediately terminated if a defendant is acquitted or if  
 36 charges against the defendant are dropped.

37 (k) If a court orders a defendant to pay a pretrial services fee, the  
 38 court may, upon the defendant's conviction, enforce the order by  
 39 garnishing the wages, salary, and other income earned by the  
 40 defendant.

41 (l) In addition to other methods of payment allowed by law, a  
 42 probation department or pretrial services agency may accept payment



of a pretrial services fee by credit card (as defined in IC 14-11-1-7(a)). The liability for payment is not discharged until the probation department or pretrial services agency receives payment or credit from the institution responsible for making the payment or credit.

(m) The probation department or pretrial services agency may contract with a bank or credit card vendor for acceptance of a bank or credit card. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or pretrial services agency, or charged directly to the account of the probation department or pretrial services agency, the probation department or pretrial services agency may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the fee or fees the defendant may be required to pay under subsection (e).

(n) The probation department or pretrial services agency shall forward a credit card service fee collected under subsection (m) to the county treasurer in accordance with subsection (f). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

SECTION 2. IC 35-38-2-1, AS AMENDED BY P.L.119-2012, SECTION 166, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) Whenever it places a person on probation, the court shall:

- (1) specify in the record the conditions of the probation; and
- (2) advise the person that if the person violates a condition of probation during the probationary period, a petition to revoke probation may be filed before the earlier of the following:
  - (A) One (1) year after the termination of probation.
  - (B) Forty-five (45) days after the state receives notice of the violation.

(b) In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user's fee prescribed under subsection (d). If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee prescribed under subsection (e). The court may:

- (1) modify the conditions (except a fee payment may only be modified as provided in section 1.7(b) of this chapter); or
- (2) terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation.

(c) If a clerk of a court collects a probation user's fee, the clerk:

- (1) may keep not more than three percent (3%) of the fee to defray



the administrative costs of collecting the fee and shall deposit any fee kept under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2; and

(2) if requested to do so by the county auditor, city fiscal officer, or town fiscal officer under clause (A), (B), or (C), may transfer not more than three percent (3%) of the fee to the:

(A) county auditor, who shall deposit the money transferred under this subdivision into the county general fund;

(B) city general fund when requested by the city fiscal officer; or

(C) town general fund when requested by the town fiscal officer.

(d) In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

(1) not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) as an initial probation user's fee;

(2) a monthly probation user's fee of not less than fifteen dollars (\$15) nor more than thirty dollars (\$30) for each month that the person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter;

(4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; and

(5) an administrative fee of one hundred dollars (\$100); to either the probation department or the clerk.

(e) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

(1) not more than a fifty dollar (\$50) initial probation user's fee;

(2) a monthly probation user's fee of not less than ten dollars (\$10) nor more than twenty dollars (\$20) for each month that the person remains on probation;

(3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; and

(4) an administrative fee of fifty dollars (\$50); to either the probation department or the clerk.



(f) The probation department or clerk shall collect the administrative fees under subsections (d)(5) and (e)(4) before collecting any other fee under subsection (d) or (e). All money collected by the probation department or the clerk under this section shall be transferred to the county treasurer, who shall deposit the money into the county supplemental adult probation services fund. The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

(1) to the county, superior, circuit, or municipal court of the county that provides probation services to adults to ~~supplement~~ **provide** adult probation services; and

(2) to ~~supplement~~ **pay all or part of** the salaries of probation officers in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The probation department or clerk shall collect the administrative fee under subsection (e)(4) before collecting any other fee under subsection (e). All money collected by the probation department or the clerk of a city or town court under this section shall be transferred to the fiscal officer of the city or town for deposit into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court of the city or town for the court's use in providing probation services to adults or for the court's use for other purposes as may be appropriated by the fiscal body. Money may be appropriated under this subsection only to those city or town courts that have an adult probation services program. If a city or town court does not have such a program, the money collected by the probation department must be transferred and appropriated as provided under subsection (f).

(h) Except as provided in subsection (j), the county or local supplemental adult probation services fund may be used only to ~~supplement~~ **provide** probation services and to ~~supplement~~ **pay part or all of the** salaries for probation officers. ~~A supplemental probation services fund may not be used to replace other funding of probation services. The county fiscal body shall determine the amount of any appropriations made from the county supplemental adult probation services fund under this section, and the city or town fiscal body shall determine the amount of any appropriations made from the local supplemental adult probation services fund under this section.~~ Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.



(i) A person placed on probation for more than one (1) crime:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month;

to the probation department or the clerk.

(j) This subsection applies to a city or town located in a county having a population of more than one hundred eighty-five thousand (185,000) but less than two hundred fifty thousand (250,000). Any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for use by the court for purposes determined by the fiscal body.

(k) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

(l) The probation department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or charged directly to the probation department's account, the probation department may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the money the probation department is required to collect under subsection (d) or (e).

(m) The probation department shall forward the credit card service fees collected under subsection (l) to the county treasurer or city or town fiscal officer in accordance with subsection (f) or (g). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

SECTION 3. IC 36-2-16.5-6, AS ADDED BY P.L.220-2011, SECTION 646, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 6. (a) Except as provided in subsection (b), the administrative fees deposited into

(+) the county supplemental juvenile probation services fund under IC 31-40-2-1

(2) the county supplemental adult probation services fund under IC 35-38-2-1(f); and

(3) the local supplemental adult probation services fund under IC 35-38-2-1(g);





1 shall be used to pay for salary increases required under the salary  
2 schedule adopted under this chapter and IC 11-13-1-8 that became  
3 effective January 1, 2004.

4 (b) Administrative fees ~~collected~~ **deposited into the county**  
5 **supplemental juvenile probation services fund under IC 31-40-2-1**  
6 that exceed the amount required to pay for salary increases required  
7 under the salary schedule adopted under this chapter and IC 11-13-1-8  
8 may be used in any manner permitted under IC 31-40-2-2.  
9 ~~IC 35-38-2-1(f) or IC 35-38-2-1(j).~~

